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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1022

STATE OF MAINE, LIBELLANT,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Counsel for Petitioner.

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Petition.

To the Honorable Justices of the Supreme Court of the United States:

The petition of the State of Maine for a Writ of Certiorari to be directed to the Circuit Court of Appeals for the First Circuit to bring before this Honorable Court the cause therein pending, viz., No. 3845, State of Maine, Libellant-Appellant *v.* United States of America, Respondent-Appellee.

I.

Statement of Matter Involved.

The State of Maine is the owner and operator of a drawbridge extending across the navigable waters of the Kennebec River between Bath, Maine and Woolwich, Maine.

The Coast Guard Tender ILEX is and during the times hereafter mentioned was a public vessel of the United States, used as a lighthouse tender along the Maine coast.

On or about the 17th day of August, 1939, the ILEX, then in the control of and operated by servants of the United States, struck and seriously damaged this bridge.

The State of Maine, as the owner of the bridge, filed a libel in admiralty to recover for this damage in the District Court of the United States, for the District of Maine, against the United States as owner of the ILEX, under the provisions of the *Public Vessels Act* of March 3, 1925, U. S. C., Title 46, Chapter 22, sec. 781 et seq., alleging that the damage was the result of the negligent operation of the ILEX by servants and employees of the United States that comprised her crew.

The United States of America appeared specially and filed a motion to dismiss the libel, on the ground that the damage being to a land structure rather than to a ship, the Admiralty Court was without jurisdiction. No evidence of any kind was offered by either party and the case was argued in the District Court on written briefs filed by the Proctors for the respective parties, following which the Court filed a written opinion sustaining the motion to dismiss on the ground that the "Public Vessels Act" did not give the Admiralty Court jurisdiction, as the damage was to a land structure. See written opinion filed by District Court (R. 6-9).

On appeal to the Circuit Court of Appeals for the First Circuit, the Court of Appeals, under the date of March 27,

1943, handed down a written opinion (R. 14-17) sustaining the findings of the District Court. From the findings and rulings of the Circuit Court of Appeals this petition is filed.

II

Jurisdiction.

The Petitioner admitted in the District Court and in the Circuit Court of Appeals that if the ILEX had been a privately owned vessel, the Admiralty Court would be without jurisdiction because the damage was to a bridge, a land structure, and the Petitioner depends solely on the provisions of the "Public Vessels Act" to give the Admiralty Court jurisdiction in this action.

III.

Question Presented.

The only question requiring the consideration of this Court is whether or not the District Court, as a Court of Admiralty, had jurisdiction of the proceedings in this case by virtue of the provisions of the "Public Vessels Act".

The particular section of the Act on which the Petitioner relies to sustain the jurisdiction of the Admiralty Court reads as follows:

> "*Section 781,* LIBEL IN ADMIRALTY AGAINST OR IMPLEADER OF UNITED STATES. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, *for damages caused by a public vessel of the United States,* and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States; PROVIDED, That the cause of action arose after the 6th day of April, 1920. (Mar. 3, 1925, c. 428, sec. 1, 43 Stat. 1112.)" (Italics ours.) "Public Ves-

sels Act", United States Code, Title 46, Chapter 22, sec. 781.

The Petitioner took the position in the lower courts that the language of the Act is clear, and by its terms Congress intended to and did drop the shield of government immunity in cases where a public vessel of the United States damaged property of another, and gave the Admiralty Courts jurisdiction of any actions brought to recover for damages thus caused.

The Government argued that the language of the Act was ambiguous and in its briefs referred to the Senate Report and quoted from statements and letters made or written prior to and during the passage of the Act, which the Government attorneys claimed tended to show that it was the intention of Congress to give jurisdiction to the Admiralty Court in actions to recover for damage caused by a public vessel only in cases where the Admiralty Court would have had jurisdiction if the vessel had been privately owned. Although these statements and letters were not in evidence and for the first time appeared in the Respondent's brief, the District Court considered them and held that they showed that the true intent of Congress did not appear in the plain language of the Act. The Court then denied the jurisdiction of the Admiralty Court on the ground that it was not the intent of Congress to give jurisdiction to the Admiralty Court in actions brought to recover for damages caused by a public vessel, unless such court would have had jurisdiction of such action if the vessel that did the damage had been privately owned.

The Circuit Court of Appeals, in confirming the District Court, said:

> "By its *plain words* it (the Act) permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the

> United States. This is abundantly plain, but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." Record, p. 16. (Italics ours.)

As the Court of Appeals said, Congress did not and we say it *intentionally did not* define the scope of the word "damages" and the reason it did not define the scope of the word "damages" is,—because it intended, as the clear languages shows, to include *all damages* caused by a public vessel.

It is because the District Court and the Circuit Court of Appeals have attempted to read into the Act something that is not there, that this petition is filed, with the hope that this Court will rule that under the terms of the "Public Vessels Act", the proper United States District Court, sitting as an Admiralty Court, has jurisdiction of any action brought to recover for damages caused by a public vessel of the United States.

Prayer.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari may issue directed to the United States Circuit Court of Appeals for the First Circuit commanding that court to certify and to send to this court a full and complete transcript of the record of all proceedings of said court in the above-entitled cause, to the end that said cause may be reviewed and determined by this court as provided by law.

And your petitioner will ever pray.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.

STATE OF MAINE,
Cumberland, ss: April 28, 1943.

We, Frank I. Cowan and Nathan W. Thompson, having been duly admitted to practice in the Supreme Court of the United States, as attorneys and counsellors of the Court, do hereby certify that the foregoing Petition for a Writ of Certiorari has been examined by us, and that, in our opinion, for the reasons therein set forth, the Writ ought to issue as prayed for.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Statement.

The only issue to be decided by this Court is whether or not the "Public Vessels Act" of March 3, 1925, United States Code, Title 46, Chapter 22, Sec. 781 et seq., pertinent parts of which are quoted in Petition, pp. 3-4, gives to the proper District Court of the United States, sitting as a Court of Admiralty, jurisdiction over an action brought against the United States to recover for damages caused by a public vessel of the United States even though the damage was to a land structure, such as a bridge.

The Petitioner contends that the language of the Act is clear and all inclusive, and that anyone damaged by a public vessel may, under the terms of this Act, file a libel in admiralty against the United States in the proper United States District Court to recover for such damages.

The Government, on the other hand, contends that the "Public Vessels Act" limits the type of damage for which the Act grants relief to damage of an admiralty nature, such as damage to a ship, and excludes damage to a land structure, such as damage to a bridge.

The District Court, in its opinion, referred to the "Suits in Admiralty Act" of March 9, 1920, United States Code, Title 46, Chapter 20, Sec. 742, the pertinent part of which Act reads as follows:

> "*Section 742. LIBEL IN PERSONAM.* In cases where if *such vessel were privately owned or operated,* or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant

> vessel or is a tugboat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found * * *."

and the District Court said in its opinion (Record, Pp. 6-9) as the *"Suits in Admiralty Act"* did not give jurisdiction to the Admiralty Court of cases involving damage to land structures, it could not have been the intention of Congress, under the *"Public Vessels Act,"* to give any greater rights against the Government in actions for damages caused by publicly owned vessels. It was largely on this premise that the District Court based its decision, sustaining the Government's motion to dismiss the libel.

The reason for limiting relief under the "Suits in Admiralty Act" and making it all inclusive under the "Public Vessels Act" is clear (Infra, pp. 12-14).

The Circuit Court of Appeals, while adopting the decision of the District Court, went further, and, in effect, said that while the language of the "Public Vessels Act" was *abundantly plain,* it was yet ambiguous because the Act did not define the scope of the word "damages." On this point, the Circuit Court of Appeals said (R. P. 16):

> "By its plain words it permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the United States. *This is abundantly plain,* but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." (Italics ours.)

It has been the Petitioner's contention from the beginning that Congress did not intend to confine, restrict, or limit the word "damages," as it intended the Act to include all damages caused by a public vessel.

It is difficult to understand how Congress could have made the language any broader than it did and if it meant to restrict the right to recover to a particular type of damage, it certainly could and would have done so by using a very few restrictive words, but having failed to confine the scope of the word "damages," it will be presumed Congress meant what it said, viz.: that recovery may be had for all types of damages caused by a public vessel.

When Congress passed the "*Public Vessels Act,*" the "*Suits in Admiralty Act*" with its restricting clause had been in existence five years, and Congress would certainly have followed the restrictive clause contained in that earlier Act if it had any intention to restrict the jurisdiction of the Admiralty Court to particular types of damage.

What reason would Congress have to treat different people differently, just because they happened to own different types of property?

Why, if a public vessel struck another vessel that was lying alongside a wharf and glanced off that vessel, and damaged the wharf, would Congress want to give the vessel owner who had been damaged the right to sue in admiralty but compel the wharf owner, who had also been damaged by the same act, to get a Special Congressional Act giving him permission to sue the United States?

In support of its petition, the Petitioner contends:

I. That Congress has the right to determine how the United States may be sued.

II. That when a Congressional Act is clear, the Courts have no right to search for some hidden intention of Congress.

III. That there was reason to give broader rights under the "Public Vessels Act" than were given under the "Suits in Admiralty Act."

IV. That the Senate Report to which the Government referred in the lower court in its argu-

ment and to which it will undoubtedly refer in this Court proves nothing.

I.

Congress Has the Right to Determine How the United States May Be Sued.

Citation of authorities is unnecessary to support this contention. The Government is immune from suit for damages caused by its servants or agents, but such immunity may be waived, and the time, place and type of action that may be brought against it can be fixed by Congress.

II.

When a Congressional Act Is Clear, the Courts Have No Right to Search for Some Hidden Intention of Congress.

In *Caminetti* v. *United States,* 242 U. S. Reports, Page 470, at page 485, Mr. Justice Day said:

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms * * *.
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."

At page 490, he further said:

> "* * * If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning."
>
> "Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching

> the true meaning of the legislature in cases of doubtful interpretation, * * *. *But, as we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction, or from any extraneous source.* In other words, the language being plain, and not leading to absurd or wholly impractical consequences, *it is the sole evidence of the ultimate legislative intent.* See MacKenzie *v.* Hare, 239 U. S. 299, 308. (Italics ours.)
>
> "The fact, if it be so, that the act as it is written opens the door to blackmailing operations upon a large scale, is no reason why the courts should refuse to enforce it according to its terms, if within the constitutional authority of Congress. Such considerations are more appropriately addressed to the legislative branch of the government, which alone had authority to enact and may if it sees fit amend the law."

The Circuit Court of Appeals, referring to the "Public Vessels Act," in this case said (Record, P. 16):

> "By its plain words it permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the United States. This is *abundantly plain,* but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." (Italics ours.)

Why, if the Act is "abundantly plain," did the lower court seek and claim to find a secret intention? The very fact that Congress "did not see fit," as the Circuit Court of Appeals says, to define the scope of the word "damages," shows that it meant to include all types of damage. If Congress had intended to limit or define the scope of the word "damages," then it would have limited the meaning of the word but having failed to do so, it is all inclusive.

We submit that if it had not been for the restrictive clause in the earlier Act ("Suits in Admiralty Act," the lower courts would not have attempted to find restrictions in the present Act and the reasons for the difference in the two Acts is apparent (*Infra*, Pp. 12-14).

III.

There Was Reason to Give Broader Rights under the "Public Vessels Act" Than Were Given under the "Suits in Admiralty Act".

During the last war, the United States Government built a large fleet of merchant vessels, title of which was in the United States Emergency Fleet Corporation, an independent corporation, stock of which was owned by the United States of America. Prior to the passage of the "Suits in Admiralty Act" in 1920, it was a recognized, common, and proper practice for a party injured by a vessel owned or operated by the United States Emergency Fleet Corporation to libel such vessel just as though the vessel had been privately owned, with the result that these ships, which were actually owned by the United States, were being constantly delayed by libels being filed against them and the "Suits in Admiralty Act" was passed to prevent further delays to these vessels.

In *Nahmeh* v. *United States*, 267 U. S. 122, on page 124, the Supreme Court said:

> "The Suits in Admiralty Act was passed to provide a suit in personam in lieu of the previous unlimited right of suitors to libel merchant vessels belonging to the United States Government in rem in ports of the United States and its possessions, a right which had proved objectionable * * *."

As the record title of these ships was in a private corporation, they were not considered public vessels and if one of these vessels caused any damage, that was not of an

admiralty nature, the injured party could and did sue the United States Emergency Fleet Corporation, as the registered owner of the ship in an action at law, just as an injured party would sue the owner of any vessel that did damage to a land structure. It was to *restrict* a right that already existed and not to grant additional rights, that the "Suits in Admiralty Act" was passed.

On the contrary, prior to the passage of the "*Public Vessels Act*", no one ever claimed the right to libel a battleship, a destroyer, or any other publicly owned vessel, and no one ever claimed the right to sue the United States at law for a tort without a special act of Congress permitting the injured party to sue to recover for the damages caused by a public vessel. Prior to the passage of the "Public Vessels Act", it was necessary for a party whose property was injured by a public vessel to get a special act of Congress to permit suit to be brought against the United States. This not only placed an extra and unnecessary burden on the injured party, but it took a tremendous amount of Congress's time to handle such private bills. (Think, with all the additional public vessels that this country now owns, what it is going to mean to Congress if a special act is necessary each time damage is caused by a public vessel.) It was to obviate this unnecessary burden, both to the individual and to Congress, that Congress gave to the public who might be injured by a public vessel a right that had never before existed. The purpose of the Act was just contrary to the purpose of the "Suits in Admiralty Act". One restricted a right that already existed and the other granted new rights that had not before existed.

The Act does not pretend to give the injured party damages; it only gives the injured party a right to litigate his cause of action in an admiralty court of the United States, without the necessity of each time getting a special act of Congress.

What possible reason would Congress have to give any greater or different rights to a class of people who happen to own ships than it did to people who own bridges or docks that might be damaged by a public vessel?

IV.

The Senate Report to Which the Government Referred in the Lower Court in Its Argument and to Which It Will Undoubtedly Refer in This Court Proves Nothing.

In the first place, the Petitioner contends that the Act being clear, the court has no right to seek for any hidden intention that Congress may have had but the Petitioner further contends that there is not a thing to be found in the Senate Report, relating to the passage of the "Public Vessels Act", from which the Government quoted at length in its briefs in the lower courts that indicates that Congress meant to limit the type of damage for which recovery could be had under the Act.

On the other hand, as the Petitioner pointed out in the Court of Appeals, actually a bill for permission to sue in this case was prepared for filing in Congress by a Maine Congressman, but before this bill was filed this congressman was informed by the Chairman of the then Judiciary Committee of the House of Representatives that the State had its remedy under the "Public Vessels Act" and, following this information, the bill was held up and this action started.

Under date of June 20, 1941, the then Acting Secretary of the Treasury of the United States wrote to Honorable Hatton W. Summers, then Chairman of the Committee of Judiciary of the House of Representatives, as follows:

"June 20, 1941.

DEAR MR. CHAIRMAN:

Further reference is made to your letter of May 30, 1941, addressed to the Claims Division, Coast Guard,

Department of the Treasury, inclosing copies of H. R. 1051, 77th Congress, 1st Session, a bill 'For the relief of the State Highway Commission of the State of Maine', and requesting an expression of the views of this Department concerning this proposed legislation.

The purpose of this bill is to authorize and direct payment to the State Highway Commission of the State of Maine of the sum of $6,386.32, as reimbursement for actual expenditures incurred in the repair of the Carlton Bridge, Bath, Maine, damaged on August 17, 1939, when it was struck by the United States Coast Guard tender ILEX.

The claim of the State Highway Commission of the State of Maine in this case appears to be one that is susceptible of adjudication in the courts of the United States under the provisions of the Act of March 3, 1925, 43 Stat., 1112 (U. S. C. title 46, Secs. 781 et seq.). The records of the Coast Guard, which conducted an investigation of the accident in question shortly after its occurrence, disclose grounds for questioning the liability of the United States for the damage to the bridge. It may be pointed out that under the provisions of the Act cited there is a time limit for the bringing of such a suit, namely, two years after the cause of action arose.

Accordingly, this Department is of the opinion that the proper course is for the State Highway Commission of the State of Maine to seek its remedy in the courts as provided by law, and it recommends that the proposed legislation, H. R. 1051, be not enacted.

Very truly yours,

(Signed) HERBERT E. GASTON,
Acting Secretary of the Treasury.

Honorable Hatton W. Summers, Chairman,
Committee on the Judiciary,
House of Representatives.

WPH/fbw.
Typed June 5, 1941."

Under the date of July 24, 1941, Mr. Gaston, in his same capacity, then wrote Honorable Margaret Chase Smith, Con-

gresswoman from Maine, who was to present the bill for permission to sue to recover for the damage in this case, as follows:

"July 24, 1941.

MY DEAR MRS. SMITH:

Further reference is made to your letter of July 1, 1941, concerning H. R. 1051, a bill 'For the relief of the State Highway Commission of the State of Maine,' being for reimbursement on account of damages to the Carleton Bridge resulting from collision of Coast Guard tender ILEX, August 17, 1939.

Careful consideration has been given to the letter of June 28, 1941, from Mr. Wilder, Bridge Engineer of the Highway Commission, and to the report of the preliminary board investigating the damage. The latter had already been considered in the preparation of the Department's report, dated June 20, 1941, to the Chairman, Committee on the Judiciary, but as will be noted, this has reference only to an appraisal of the damage and does not touch the question of liability.

While it is true, as understood by Mr. Wilder, that Congressional action is necessary to secure reimbursement, Congress has provided specific modes of procedure preliminary to its consideration of certain classes of claims, in order that it may have a full ascertainment of facts and a determination thereon by a responsible Government officer or a designated tribunal, as the case may be. *For a claim of the amount of that of the State Highway Commission of the State of Maine in the instant case, $6,386.32, for damages caused by a public vessel of the United States, Congress has made provision in the Act of March 3, 1925 (U. S. C. title 46, secs. 781 et seq.) which gives sole jurisdiction thereof to United States District Courts.* It is this Department's view that it was the intent of Congress in enacting this law that such a claim follow the procedure therein prescribed. The claim, if allowed, thus

comes before Congress for appropriation as the judgment of a court.

In addition to the statutory reasons stated above it appears that the Government may have a good defense, on the ground of negligence of the bridge tender in failing promptly to open the draw of the Carleton Bridge on the occasion in question. To this was added the force of a heavy rain and freshet occurring the night previous, combined with a strong ebb tide, creating conditions which might be held to have rendered the collision unavoidable. In view of these possibilities, the circumstances in their entirety are such as to render determination by a court the logical procedure. If in his judgment such action is warranted, the Attorney General, under the Act cited, is authorized to arbitrate, compromise, or settle the claim, when a libel has actually been filed.

The Department, therefore, feels constrained to adhere to the position stated in its report to the Chairman, Committee on the Judiciary. Attention is again invited to the statutory limitation for bringing suit under the Act of March 3, 1925, namely, two years after the cause of action arose. (Italics ours).

Very truly yours,

(Signed) HERBERT E. GASTON,
Acting Secretary of Treasury.

Honorable Margaret Chase Smith, M. C.,
House of Representatives,
Washington, D. C."

While these letters, like the Senate Report quoted in the briefs of the Government in the lower courts, prove little, they do show that when the actual issue here presented was raised, the then Secretary of the Treasury and the then Chairman of the House Judiciary Committee believed, as the Petitioner does, that the Act was intended to cover and does cover all types of damage caused by public vessels. The Senate Report, referred to in the Government's brief,

is at best negative as no mention of any particular type of damage, for which action may be brought, appears anywhere in the quoted part of the report.

Conclusion.

We, therefore, submit that an order should be issued remanding this cause to the District Court, with directions to take jurisdiction and proceed with the hearing of this cause.

Respectfully submitted,

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 1022

STATE OF MAINE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the District of Maine (R. 6–9) is reported in 45 F. Supp. 35. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 14–17) is not yet officially reported.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the First Circuit was entered on March 27, 1943 (R. 17). The petition for a writ of certiorari was filed on May 13, 1943. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Public Vessels Act of 1925 authorizes a libel *in personam* in admiralty to be brought against the United States upon a nonmaritime cause of action.

STATUTE INVOLVED

The Public Vessels Act of 1925 is set forth in the Appendix, pp. 12–14, *infra.*

STATEMENT

On August 14, 1941, petitioner, the State of Maine, invoking the Public Vessels Act, filed a libel *in personam* in admiralty against the United States in the District Court of the United States for the District of Maine, seeking to recover the amount of $6,836.32, allegedly representing damages sustained when the United States Coast Guard Cutter *Ilex,* on August 17, 1939, struck and damaged petitioner's Carlton Bridge, a drawbridge over the Kennebec River (R. 2–3). On October 3, 1941, the United States appeared specially and moved to dismiss the suit for lack of jurisdiction on the ground that it was brought for a nonmaritime injury, namely, damage to a land structure, and thus failed to state a cause of action within the constitutional grant of admiralty jurisdiction or within the meaning of the Public Vessels Act (R. 4–5). On May 12, 1942, the mo-

tion to dismiss was granted, the court holding that the waiver of sovereign immunity in the Public Vessels Act was limited to causes of action cognizable within admiralty jurisdiction (R. 6–9). On appeal, the Circuit Court of Appeals for the First Circuit affirmed the judgment of the district court (R. 14–17).

ARGUMENT

The suit at bar being against the United States, it cannot be maintained in the absence of a statutory waiver of sovereign immunity. Petitioner seeks to draw the requisite waiver from the Public Vessels Act of 1925, 43 Stat. 1112, 46 U. S. C. 781, which provides in Section 1 that:

> a libel in personam in admiralty may be brought against the United States * * * for damages caused by a public vessel of the United States.

But the Public Vessels Act is applicable here only if that provision authorizes suits on nonmaritime, as well as maritime, causes of action, since the present suit, seeking to recover for damages to a bridge caused by a public vessel, is one for a land tort, traditionally beyond the pale of admiralty jurisdiction (*Cleveland Terminal Railroad* v. *Cleveland Steamship Co.*, 208 U. S. 316; see *Martin* v. *West*, 222 U. S. 191, 196–197), as distinguished from a maritime tort, which is cognizable in admiralty (*The Blackheath*, 195 U. S. 361; *The Raithmoor*, 241 U. S. 166). Petitioner

in effect concedes that its suit is not within the admiralty jurisdiction, but argues that the Public Vessels Act exposes the United States to nonmaritime as well as maritime liabilities in connection with the operation of its public vessels. We believe that both courts below rightly rejected this contention and properly dismissed petitioner's suit for want of jurisdiction.

1. The literal language of the Public Vessels Act excludes suits on nonmaritime causes of action. In an effort to bring its suit within the scope of the Act, petitioner focuses solely on the words "damages caused by a public vessel of the United States" in Section 1, *supra*. But these words, when read in their context, do not sustain petitioner's case. The preceding words, "a libel in personam in admiralty," traditionally peculiar to the institution of proceedings upon maritime causes of action (see *The Atlas*, 93 U. S. 302, 316), indicate that the statute does not cover nonmaritime proceedings, for it is hardly conceivable that Congress intended to create the hybrid of a libel in admiralty upon a nonmaritime cause of action. The natural conclusion, avoiding such an incongruity and giving sensible meaning to every word in the provision, is that Section 1 waives the immunity of the United States only as to causes of action cognizable in admiralty.

The correctness of our view is confirmed by analysis of the Public Vessels Act as a whole.

This statute is primarily substantive in nature, containing no independent provisions regarding the procedure to be followed in the trial of the suits which it authorizes. Instead, Section 2 of the Public Vessels Act provides that such suits "shall be subject to and proceed in accordance with the provisions of the [Suits in Admiralty Act of 1920][1] insofar * * * as not inconsistent, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest." Section 2 of the Suits in Admiralty Act permits a libel *in personam* to be brought against the United States in connection with merchant vessels owned, possessed, or operated by the Government, "in cases where if * * * privately owned and possessed, a proceeding in admiralty could be maintained." And Section 3, immediately following, prescribes the basic procedure for the trial of such suits, and thus necessarily for suits under the Public Vessels Act, pursuant to the latter's Section 2, as follows:

> Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a

[1] 41 Stat. 525–528 (46 U. S. C. §§ 741–752).

> money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. *Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction.* If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. [Italics supplied.]

The procedure thus provided is manifestly inapposite to the trial of any but "cases of admiralty and maritime jurisdiction." Indeed, to admit petitioner's interpretation of the Act would not only ascribe to Congress the selection of an incongrous and inappropriate procedure for a large class of suits thereunder, but would run counter to the principle that statutes waiving the sovereign immunity be strictly construed in favor of the Government (*Blackfeather* v. *United States,* 190 U. S. 368, 376; *United States* v. *Michel,* 282 U. S. 656; *United States* v. *Sherwood,* 312 U. S. 584, 589–592).

2. Petitioner's theory is also repelled by the Act's legislative history, which of course, con-

trary to petitioner's argument (Pet. 10–11, 14), is relevant (see *Boston Sand & Gravel Company* v. *United States,* 278 U. S. 41, 48; *United States* v. *Dickerson,* 310 U. S. 554, 561–562). The reports of both Congressional committees which considered the measure described its purpose as follows (H. Rept. 913, 68th Cong., 1st Sess., p. 1; S. Rept. 941, 68th Cong., 2d Sess., p. 1):

> The chief purpose of this bill is to grant private owners of vessels and of merchandise a right of action when their vessels or goods have been damaged as the result of a collision with any Government-owned vessel, though engaged in public service, without requiring an application to Congress in each particular instance for the passage of a special enabling act.
>
> The bill, in principle, is simply a substitute for the practice, long established, of passing special bills under which private owners have been allowed to submit to our admiralty courts admiralty claims of this character.

This plainly indicates that Congress, when it passed the Public Vessels Act, was thinking in terms of "cases of admiralty and maritime jurisdiction." Indeed, to construe the statute to authorize suits against the United States upon nonmaritime causes of action "leads to an unreasonable result plainly at variance with the policy of the legislation as a whole" (*Ozawa* v. *United States,* 260 U. S. 178, 194). For it would

attribute to Congress the intention to impose greater liabilities upon the United States in the operation of its public vessels, devoted directly to the maintenance of the public safety, than it has seen fit to impose with respect to Government merchant vessels, normally devoted to ordinary mercantile pursuits.[2] The apparent purpose of the Public Vessels Act was rather "to assume liability for damage done by a public vessel * * * similar to that already assumed by the United States with respect to its merchant fleet by the Suits in Admiralty Act." See *Dobson* v. *United States,* 27 F. (2d) 807, 808 (C. C. A. 2), certiorari denied, 278 U. S. 653.

Petitioner attempts to justify the imposition of broader liabilities upon the United States under the Public Vessels Act on the hypothesis that this statute conferred a previously nonexistent right, whereas the Suits in Admiralty Act "restricted" a previously available right. Petitioner's premise is questionable;[3] but even if it be accepted *ar-*

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[2] As previously noted, *supra*, p. 5, Section 2 of the Suits in Admiralty Act limits the liability of the United States in the operation of its merchant vessels to "cases where if * * * privately owned and possessed, a proceeding in admiralty could be maintained."

[3] Prior to the enactment of the Suits in Admiralty Act, the right to proceed against Government merchant vessels was likewise founded upon a statutory waiver of sovereign immunity, Section 9 of the Shipping Act of 1916 (39 Stat. 728, 730), the vessels being otherwise immune as sovereign property (see *The Siren*, 7 Wall. 152, 154–155). See *The Lake Monroe*, 250 U. S. 246; *Blamberg Brothers* v. *United*

guendo, the asserted conclusion does not follow. The manifestation of a legislative intention to narrow previously available rights with respect to Government *merchant* vessels suggests at least as restrictive a Congressional purpose in respect of a later statute consenting to liability in the operation of the Government's *public* vessels.

Nor is there any point to the suggestion (Pet. 13) that because of the increasing number of public vessels now being acquired an undue burden will be placed upon Congress if special acts are necessary to obtain relief for nonmaritime injuries caused by such vessels.[4] The same argu-

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States, 260 U. S. 452, 458. And while it substituted a right *in personam* against the United States for the previous *in rem* liability of the vessels, it is hardly accurate to conclude that the Suits in Admiralty Act "restricted" the liabilities of the United States in connection with the operation of its merchant vessels. *Cf. Eastern Transportation Co.* v. *United States*, 272 U. S. 675, 688 *et seq.; Johnson* v. *Fleet Corp.*, 280 U. S. 320, 325–326; see also Brief for the United States in No. 65, this Term (*Clyde Mallory Lines* v. *Eglantine*, 317 U. S. 395), p. 12, n. 6.

It is also questionable whether the Suits in Admiralty Act restricted the previously available right to proceed at law against government-owned shipping corporations, as distinguished from the United States, upon nonmaritime causes of action, a right founded on corporate authority to sue and be sued (*Sloan Shipyards* v. *Fleet Corporation*, 258 U. S. 549). For the exclusiveness of the remedy conferred by the Suits in Admiralty Act evidently applies only to "cases where a libel might be filed under it." *Johnson* v. *Fleet Corp.*, 280 U. S. 320, 327.

[4] The correspondence quoted in the petition (pp. 14–17) concerning petitioner's unsuccessful attempt to obtain relief by special act of Congress is not a part of the record but

ment could be made with respect to the general immunity of the United States from tort liability, which Congress has not yet seen fit to relax—more particularly with respect to nonmaritime injuries inflicted by United States merchant vessels, whose numbers are likewise rapidly increasing at the present time. And as in these other classes of

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was introduced in a letter written to the clerk of the court below, after the case had been argued before that court. The Attorney General thereupon wrote the clerk that inquiry of the Coast Guard disclosed that the letters from the Acting Secretary of the Treasury had in fact been prepared by an official of the Lighthouse Service, who was not a lawyer, without consultation with the Department of Justice. The letter also noted that this official was unaware of the "*Pickert Fish Company* case," in which, subsequent to the passage of the Public Vessels Act, a special act had been passed permitting that company to sue at law for damages to a wharf caused by a Coast Guard cutter. The letter concluded that had the matter been referred to its attention, the Department of Justice would have advised the Treasury officials of its view that the Public Vessels Act did not extend to land torts. The favorable reports of the Congressional committees upon the special act for the relief of the Pickert Fish Company (45 Stat. 2040) embodied a Department of Justice memorandum which concluded that there was no reason why the claimant should not be relieved by special act, after reciting that a libel in admiralty upon the same claim had previously been brought against the United States under the Public Vessels Act, but that exceptions seeking its dismissal had been filed on the ground that admiralty jurisdiction did not cover damages to a wharf. S. Rep. 1400, 70th Cong., 2d Sess.; H. Rep. 1462, 70th Cong., 1st Sess. In 1937 a similar private act was passed for the relief of the Delaware Bay Shipbuilding Company, Inc., 50 Stat. (pt. 2) 1079. See S. Rep. 1254, 75th Cong., 1st Sess.; H. Rep. 411, 75th Cong., 1st Sess.

torts for which the United States has not consented to be sued, the remedy lies with the legislature.

In the circumstances, there is no basis for construing the Public Vessels Act to permit suits against the United States upon nonmaritime causes of action.

CONCLUSION

There is no conflict, and the decision below is clearly correct. The petition for certiorari should accordingly be denied.

Respectfully submitted.

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JUNE 1943.

APPENDIX

The Public Vessels Act, 43 Stat. 1112–1113 (46 U. S. C. §§ 781–790), provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided,* That the cause of action arose after the 6th day of April 1920.
>
> SEC. 2. That such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States

in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

SEC. 3. That in the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: *Provided,* That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

SEC. 4. That no officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause

of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

SEC. 5. That no suit may be brought under this Act by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

SEC. 6. That the Attorney General of the United States is hereby authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

SEC. 7. That any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 6 of this Act, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

SEC. 8. Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

SEC. 9. The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

SEC. 10. That the Attorney General of the United States shall report to the Congress at each session thereof all suits in which final judgment shall have been rendered and all claims which shall have been settled under this Act.

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